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| UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY | |
| RAS Crane, LLC 10700 Abbott's Bridge Road, Suite 170 Duluth, GA 30097 Telephone Number 470-321-7112 Attorneys For Secured Creditor Kevin Butterly, Esq. (KB-3800) | CASE NO.: 17-34413-CMG CHAPTER 13 Objection to Confirmation of Debtor's Chapter 13 Plan |
| In Re: Richard Halley, Debtor. | |

OBJECTION TO CONFIRMATION OF DEBTOR'S CHAPTER 13 PLAN

DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR BCAP TRUST LLC 2007-AA2 MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2007-AA2 ("Secured Creditor"), by and through its undersigned counsel, objects to confirmation of Debtor's Chapter 13 Plan (DE # 15), and states as follows:

1. Debtor, Richard Halley, ("Debtor"), filed a voluntary petition pursuant to Chapter 13 of the Bankruptcy Code on December 4, 2017.
2. Secured Creditor holds a security interest in the Debtor's real property located at 2050 RIVER ROAD, HARMONY, NJ 08865, by virtue of a Mortgage recorded on December 4, 2006 in Book 4590, Page 76 of the Public Records of Warren County, NJ. Said Mortgage secures a Note in the amount of \$192,000.00.
3. The Debtor filed a Chapter 13 Plan on December 28, 2017.
4. The Plan proposes to value the collateral at \$135,600.00 and modify Secured Creditor's claim to comport with that value. Secured Creditor disputes this valuation. Until a final determination on valuation occurs, it would be premature to consider confirming Debtor's Plan.

5. The Plan proposes to pay 0.00% interest on Secured Creditor's claim, which is inadequate to assure that property distributed to Secured Creditor under the plan will have a value, as of the effective date of the plan that is not less than the allowed amount of such claim.
6. In *Till v. SCS Credit Corp.*, 541 U.S. 465, 124 S.Ct. 1951(2004), the U.S. Supreme Court addressed the appropriate cram down interest rate under 11 U.S.C. § 1325(a)(5)(B)(ii). *Till* adopts the “formula approach,” which looks to the national prime rate, as reported daily in the press, and adds an appropriate “risk adjustment.” Although *Till* does not specify what the risk adjustment should be, it states that courts generally approve adjustments of 1-3%. Accordingly, Secured Creditor maintains that, lacking evidence to the contrary, a risk adjustment of 2% is reasonable.
7. The prime rate, as published in the Wall Street Journal, is currently 4.50%. Accordingly, Secured Creditor maintains the Court should not approve a cram down interest rate less than 6.5%.
8. The Plan is also silent as to the payment of real estate taxes and insurance. Secured Creditor requests that the Debtor's plan be amended to specify who shall be responsible for the payment of real estate taxes and insurance.
9. The Plan includes payments toward the Note and Mortgage with Secured Creditor, however the figures used by the Debtor are inaccurate. It is anticipated that Secured Creditor's claim will show the pre-petition arrearage due Secured Creditor is \$170,744.24, whereas the Plan proposes to pay only \$12,099.00. Therefore, the Plan is not in compliance with the requirements of 11 U.S.C. §§ 1322(b)(3) and 1325(a)(5) and cannot be confirmed. Secured Creditor objects to any plan which proposes to pay it anything less than \$170,744.24 as the pre-petition arrearage over the life of the plan.
10. Based on Debtor's Schedules, the Plan does not appear feasible due to the representation that sufficient disposable income is not available to support the proposed Plan payments. Thus, the plan violates the provisions of 11 U.S.C. § 1325(a)(6) and cannot be confirmed.

WHEREFORE, Secured Creditor respectfully requests this Court sustain the objections

stated herein and deny confirmation of Debtor's Plan, and for such other and further relief as the Court may deem just and proper.

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CERTIFICATION OF SERVICE

1. I, Kevin Butterly, represent DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR BCAP TRUST LLC 2007-AA2 MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2007-AA2 in this matter.
2. On 2/1/2018, I caused a copy of the following pleadings and/or documents to be sent to the parties listed in the chart below.
3. I certify under penalty of perjury that the above documents were sent using the mode of service indicated.

2/1/2018

RAS Crane, LLC
Attorney for Secured Creditor
10700 Abbott's Bridge Road, Suite 170
Duluth, GA 30097
Telephone Number <<Special.FirmPhone>>

By: /s/Kevin Butterly
Kevin Butterly, Esquire
NJ Bar Number KB-3800
Email: kbutterly@rascrane.com

| <u>Name and Address of Party Served</u> | <u>Relationship of Party to the Case</u> | <u>Mode of Service</u> |
|---|--|---|
| Tomas Espinosa, ESQ 8324 Kennedy Boulevard North Bergen, NJ 07047 | Attorney for Debtor | <input type="checkbox"/> Hand-delivered <input checked="" type="checkbox"/> Regular mail <input type="checkbox"/> Certified Mail/RR <input type="checkbox"/> E-mail <input type="checkbox"/> Notice of Electronic Filing (NEF) <input type="checkbox"/> Other (as authorized by the court*) |
| Richard Halley 662 Wilbur Avenue Phillipsburg, NJ 08865 | Debtor | <input type="checkbox"/> Hand-delivered <input checked="" type="checkbox"/> Regular mail <input type="checkbox"/> Certified Mail/RR <input type="checkbox"/> E-mail <input type="checkbox"/> Notice of Electronic Filing (NEF) <input type="checkbox"/> Other (as authorized by the court*) |
| Albert Russo Standing Chapter 13 Trustee CN 4853 Trenton, NJ 08650-4853 | Trustee | <input type="checkbox"/> Hand-delivered <input checked="" type="checkbox"/> Regular mail <input type="checkbox"/> Certified Mail/RR <input type="checkbox"/> E-mail <input type="checkbox"/> Notice of Electronic Filing (NEF) <input type="checkbox"/> Other (as authorized by the court*) |
| US Dept of Justice Office of the US Trustee One Newark Center Ste 2100 Newark, NJ 0710 | U.S. Trustee | <input type="checkbox"/> Hand-delivered <input checked="" type="checkbox"/> Regular mail <input type="checkbox"/> Certified Mail/RR <input type="checkbox"/> E-mail <input type="checkbox"/> Notice of Electronic Filing (NEF) <input type="checkbox"/> Other (as authorized by the court*) |